

**SUMMARY:** Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted final annual fee rates of 0.00% for tier 1 and 0.059% (.00059) for tier 2 for calendar year 2007. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self-regulation under 25 CFR part 518, the final fee rate on class II revenues for calendar year 2007 shall be one-half of the annual fee rate, which is 0.0295% (.000295).

**FOR FURTHER INFORMATION CONTACT:** Kwame Mainoo, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone (202) 632-7003; fax (202) 632-7066 (these are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The Indian Gaming Regulatory Act (IGRA) established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates, the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the final rate being adopted today are effective for calendar year 2007. Therefore, all gaming operations within the jurisdiction of the Commission are required to self administer the provisions of these regulations, and report and pay any fees that are due to the Commission by December 31, 2007.

Dated: December 18, 2007.

**Philip N. Hogen,**

*Chairman, National Indian Gaming Commission.*

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**BILLING CODE 7565-01-M**

## DEPARTMENT OF ENERGY

### Office of Nuclear Energy

#### Nuclear Energy Advisory Committee; Notice of Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, App. 2, and section 102-3.65, title 41, Code of Federal Regulations and following

consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Nuclear Energy Advisory Committee, formerly known as the Nuclear Energy Research Advisory Committee, has been renewed for a two year period.

The Committee will provide advice to the Office of Nuclear Energy on planning and priorities in the nuclear energy program. The Secretary of Energy has determined that renewal of the Nuclear Energy Advisory Committee is essential to conduct the business of the Department of Energy and is in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. No. 92-463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

*For Further Information Contact:* Ms. Rachel Samuel at (202) 586-3279.

Issued in Washington DC on December 15, 2007.

**Carol A. Matthews,**

*Acting Committee Management Officer.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-317]

### Calvert Cliffs Nuclear Power Plant, Inc.; Calvert Cliffs Nuclear Power Plant, Unit No. 1; Exemption

#### 1.0 Background

Calvert Cliffs Nuclear Power Plant, Inc. (the licensee), is the holder of Renewed Facility Operating License Nos. DPR-53 and DPR-69, which authorize operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (Calvert Cliffs 1 and 2), respectively. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Calvert County, Maryland.

#### 2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Section 50.46, "Acceptance criteria for emergency core cooling systems for

light-water nuclear power reactors," requires, in part, that "Each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO™ cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents [LOCAs] conforms to the criteria set forth in paragraph (b) of this section." Appendix K, "ECCS Evaluation Models," to 10 CFR Part 50 requires, in part, that the rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation. The Baker-Just equation assumes that the cladding material is composed of either zircaloy or ZIRLO™.

By letter dated February 23, 2007, the licensee requested an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 to allow the use of lead fuel assemblies (LFAs) clad with advanced zirconium-based alloys manufactured by Westinghouse Electric Company and M5™ alloy manufactured by AREVA. The advanced zirconium-based and M5™ alloys are proprietary alloys and are chemically different from either zircaloy or ZIRLO™ fuel cladding materials, which are approved for use. Therefore, a plant-specific exemption from these regulations is required to support the use of LFAs that are not manufactured with zircaloy or ZIRLO™.

Previously, by letter dated April 11, 2003, the NRC staff approved the irradiation of 8 LFAs, four Westinghouse LFAs and four AREVA LFAs, for 2 operating cycles in the core of Calvert Cliffs 2. These LFAs were inserted into the Unit 2 core in April of 2003 and remained there during Operating Cycles 15 and 16. Subsequently, by letter dated November 9, 2006, the NRC staff approved the irradiation of 4 LFAs, two Westinghouse LFAs and two AREVA LFAs, for a third operating cycle in either Calvert Cliffs 1 or Calvert Cliffs 2. The licensee subsequently inserted these 4 LFAs into the core of Calvert Cliffs 2 during their spring 2007 refueling outage for operating cycle 17 which is currently ongoing. The remaining 4 LFAs, two Westinghouse LFAs and two AREVA LFAs, were discharged to the spent fuel pool for detailed post-irradiation examinations during the spring 2007 Unit 2 refueling outage.

In the licensee's letter of February 23, 2007, the licensee requested the exemption to support the re-insertion of the remaining 4 LFAs, two

Westinghouse LFAs and two AREVA LFAs, for a third operating cycle. These LFAs would be placed in high-duty core locations in Calvert Cliffs 1 for operating cycle 19 in order to gain high burnup experience. The licensee requested to irradiate the LFAs beyond the current burnup limit to a peak rod average of 70,000 MWD/MTU for Calvert Cliffs Unit 1.

### 3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under Section 50.12(a)(2), special circumstances include, among other things, when application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

#### *Authorized by Law*

This exemption would allow the licensee to re-insert up to four LFAs, two Westinghouse LFAs and two AREVA LFAs, which contain some fuel rods clad with advanced zirconium-based and M5™ alloys that do not meet the definition of Zircaloy or ZIRLO™ as specified by 10 CFR 50.46, into the core of Calvert Cliffs 1. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

#### *No Undue Risk to Public Health and Safety*

The underlying purposes of 10 CFR 50.46 is to establish acceptance criteria for ECCS performance. Previously, the Westinghouse safety evaluation (WCAP-15874-NP, Revision 0, "Safety Analysis Report for Use of Improved Zirconium-based Cladding Materials in Calvert Cliffs Unit 2 Batch T Lead Fuel Assemblies," dated April 2002) and approved Framatome ANP Topical Report (BAW-10227P-A, "Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel," Framatome Cogema Fuels, February 2000) demonstrated the acceptability of the advanced zirconium-based and

M5™ cladding under LOCA conditions. The unique features of the LFAs were evaluated for effects on the LOCA analysis. The results showed that the LFAs would not adversely affect the ECCS performance. Since the four LFAs will be located at high-duty other than LOCA-limiting core locations, the licensee concludes that the LOCA safety analyses will remain bounding for these LFAs for Calvert Cliffs 1.

Paragraph I.A.5 of Appendix K to 10 CFR Part 50 states that the rates of energy, hydrogen concentration, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of zircaloy clad fuel, strict application of the rule would not permit use of the equation for the advanced zirconium-based and M5™ alloys for determining acceptable fuel performance. The underlying intent of this portion of the Appendix is to ensure that analysis of fuel response to LOCAs is conservatively calculated. The Westinghouse safety evaluation and approved AREVA topical report show that, due to the similarities in the chemical composition of the advanced zirconium-based and M5™ alloys and zircaloy, the application of the Baker-Just equation in the analysis of the advanced zirconium-based and M5™ clad fuel rods will continue to conservatively bound all post-LOCA scenarios. Thus, the application of Appendix K, Paragraph I.A.5 is not necessary to achieve its underlying purpose in these circumstances.

Based on the acceptable performance of 8 LFAs in the Calvert Cliffs 2 reactor core during operating cycles 15 and 16, the staff concludes that the licensee has demonstrated that the four LFAs will perform adequately under LOCA conditions, and thus the LFAs are acceptable for operation for Calvert Cliffs 1 operating cycle 19. Based on the above, the staff concludes that it is acceptable to grant an exemption from the requirements of 10 CFR 50.46, and Appendix K to 10 CFR Part 50 for Calvert Cliffs 1.

Based on the above, no new accident precursors are created by the exemption to allow use of advanced zirconium-based and M5™ alloy clad fuel, thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk [since risk is probability × consequences] to public health and safety.

#### *Consistent With Common Defense and Security*

The proposed exemption would allow the use of LFAs with advanced cladding materials. This change to the plant core configuration has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

#### *Special Circumstances*

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 is to establish acceptance criteria for ECCS performance. The licensee stated that the wording of the regulations renders the criteria of 10 CFR 50.46 and Appendix K inapplicable to the advanced zirconium-based and M5™ alloy clad fuel, even though the approved Westinghouse safety evaluation and AREVA topical report shows that the intent of the regulations are met. Therefore, since the underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 is achieved with the use of the advanced zirconium-based and M5™ alloy clad fuel, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for granting of an exemption from 10 CFR 50.46 and Appendix K exist.

### 4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.46 and 10 CFR Part 50, Appendix K with respect to the use of LFAs with advanced zirconium-based and M5™ alloy clad fuel.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (72 FR 71449).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 17th day of December 2007.

For the Nuclear Regulatory Commission.  
**Catherine Haney,**  
*Director, Division of Operating Reactor  
Licensing, Office of Nuclear Reactor  
Regulation.*  
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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341]

### Detroit Edison Company; FERMII 2; Exemption

#### 1.0 Background

Detroit Edison Company (the licensee) is the holder of Facility Operating License No. NPF-43, which authorizes operation of Fermi 2. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a boiling-water reactor located in Monroe County, Michigan.

Fermi 2 is in the process of re-racking its spent fuel pool (SFP), which involves the replacement of some older racks with higher-density racks. The NRC approved the re-rack project in its letter dated January 25, 2001. A result of the re-rack effort is that some of the SFP floor space that was previously used to store miscellaneous items is no longer available, due to the addition of the new racks. To address this, Fermi 2 is introducing two Holtec Overhead Platforms (HOPs) to the SFP which are designed to be placed on two specific spent fuel storage racks as approved by the NRC in its letter dated January 25, 2001.

#### 2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 74, section 74.19(c), requires that each licensee authorized to possess special nuclear material (SNM), at any one time and site location, in a quantity greater than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, shall conduct a physical inventory of all SNM in its possession under license at intervals not to exceed 12 months.

By letter dated April 27, 2007, as supplemented by letter dated November 9, 2007, the licensee requested an exemption from the requirements of 10 CFR 74.19(c) to conduct a physical inventory of all special nuclear material at intervals not to exceed 12 months.

Specifically, the request is for exemption from the physical inventory requirements for those fuel assemblies that are stored under the HOPs when the HOPs are installed in the spent fuel racks.

#### 3.0 Discussion

Pursuant to 10 CFR 74.7, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 74, when the exemptions are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

##### *Authorized by Law*

This exemption would exempt the licensee from the requirements of 10 CFR 74.19(c) for the physical inventory requirements of the fuel assemblies that are stored under the HOPs when the HOPs are installed in the spent fuel racks. As stated above, 10 CFR 74.7 allows the NRC to grant exemptions from the requirements of 10 CFR Part 74. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

##### *Will Not Endanger Life or Property or Common Defense and Security*

Administrative controls associated with the movement of the HOPs and the HOP itself (physical barrier) will prohibit movement of the fuel assemblies in the fuel storage racks below the HOPs when the HOPs are installed. The licensee submitted regulatory commitments in Enclosure 1 of the letter dated November 9, 2007, that provide further assurance that the SNM stored under the HOPs will be adequately controlled and accounted for by the licensee. The HOPs add another barrier for access to the SNM in the SFP, thus, increasing security of SNM stored under the HOPs when the HOPs are installed. Therefore, the exemption will not endanger life or property or common defense and security.

##### *Otherwise in the Public Interest*

The licensee was previously approved by the NRC to install the HOPs as part of the licensee's re-rack of Fermi 2 SFP. The re-rack project increased the capacity of the SFP from 2,414 to 4,608 fuel assemblies to provide full core discharge capability after June 2001. As discussed above, the HOPs are needed to be installed because, due to the addition of the new racks, some of the

SFP floor space that was previously used to store miscellaneous items is no longer available. In order for the licensee to perform physical inventory of the SNM stored below the HOPs, the licensee would have to clear and uninstall the HOPs. The HOPs add another barrier for access to the SNM in the SFP, thus increasing security of SNM stored under the HOP when the HOPs are installed. An increase in security is beneficial to public interest. Therefore, the exemption is otherwise in the public interest.

#### 4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 74.7, the exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Detroit Edison Company an exemption to Fermi 2 from the requirements of 10 CFR 74.19(c) for physical inventory for those fuel assemblies that are stored under the HOPs when the HOPs are installed in the spent fuel racks. The annual physical inventory of all other SNM will continue to be performed per the requirements of 10 CFR 74.19(c).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (72 FR 70619).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 17th day of December 2007.

For the Nuclear Regulatory Commission.  
**Catherine Haney,**  
*Division Director, Division of Operating  
Reactor Licensing, Office of Nuclear Reactor  
Regulation.*

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS) Meeting of the Joint ACRS Subcommittees on Thermal-Hydraulic Phenomena and on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Joint Subcommittees on Thermal-Hydraulic Phenomena and on Reliability and Probabilistic Risk Assessment will hold a meeting on January 18, 2008, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.